

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

| | | |
|---------------------------------|---|------------------|
| In the Matter of the Protest of |) | |
| |) | DOCKET NO. 16888 |
| [Redacted] |) | |
| |) | DECISION |
| Petitioners. |) | |
| _____ |) | |

On August 30, 2002, the Idaho State Tax Commission (Tax Commission) issued a Notice of Deficiency Determination to [Redacted] (petitioners), proposing additional income tax and interest for the taxable years 1993, 1996, 1997, 1998, and 1999 in the total amount of \$6,157. The petitioners filed a timely protest and petition for redetermination. The Tax Commission, having reviewed the file, hereby issues its decision.

The sole issue to be decided is the proper application of the petitioners' 1996 Idaho net operating loss. The petitioners carried the entire 1996 Idaho net operating loss forward to taxable years 1997 and beyond. The Tax Commission's Income Tax Audit Bureau (ITA) carried \$100,000 of the petitioners' 1996 Idaho net operating loss back to taxable year 1993. In the explanation page attached to the audit report, ITA informed the petitioners that since the petitioners had failed to elect to forego the Idaho carryback period in accordance with the Idaho statute, the 1996 loss was required to be carried back and applied to prior taxable years before the 1996 loss could be carried forward to taxable year 1997. ITA also informed the petitioners that "The statute for receiving a refund for 1993 attributable to a net operating loss carryback from 1996 expired on April 15, 2000. Since the statute for receiving the refund has expired, the 1993 refund is disallowed." ITA applied the 1996 Idaho net operating loss as follows:

| | |
|---|--------------------|
| 1996 Idaho Net Operating Loss | (\$470,461) |
| Amount carried back and absorbed in 1993 | <u>\$100,000</u> |
| Amount available as a carry forward to 1997 | <u>(\$370,461)</u> |

Law and Analysis

The starting point for computing Idaho taxable income is federal taxable income as defined in the Internal Revenue Code. Idaho Code section 63-3002.¹ In computing Idaho taxable income, any federal net operating loss is added to federal taxable income. Idaho Code section 63-3022(c). Any Idaho net operating loss is then subtracted. Idaho Code section 63-3022(d).

Idaho Code section 63-3022(d)(1) stated, in pertinent part:

A net operating loss for any taxable year commencing on and after January 1, 1990, shall be a net operating loss carryback not to exceed a total of one hundred thousand dollars (\$100,000) to the three (3) immediately preceding taxable years. Any portion of the net operating loss not subtracted in the three (3) preceding years may be subtracted in the next fifteen (15) years succeeding the taxable year in which the loss arises in order until exhausted. . . . At the election of the taxpayer, the three (3) year carryback may be foregone and the loss subtracted from income received in taxable years arising in the next fifteen (15) years succeeding the taxable year in which the loss arises in order until exhausted. The election shall be made as under section 172(b)(3) of the Internal Revenue Code. An election under this subsection must be in the manner prescribed in the rules of the state tax commission and once made is irrevocable for the year in which it is made. . . .

In the petitioners' petition for redetermination dated September 10, 2002, the petitioners' representative stated, in part, that:

I protest the carry-back of \$100,000.00 of the 1996 net operating loss. Carry-back of this loss will cause my clients to lose the benefit of the \$100,000.00 loss entirely, because the years this carry-back is being carried back to are now closed years. This will result in my clients paying about \$7,753.00 in state income taxes in 1998 where this loss has been carried and used.

. . . During the normal course of tax preparation, I have always made a point of carrying Idaho net operating losses forward. I make this

¹ Unless otherwise indicated, references to Idaho Code sections refer to the Idaho Code section in effect for taxable year 1996.

election at the same time I make the election to carry-forward Federal net operating losses. This makes the administration and tracing of loss carry-forward similar for Federal and State returns of my clients.

It was clearly my intention to elect the carry-forward of the Idaho net operating loss at the time the return was prepared. I carried the entire 1996 Idaho net operating loss forward on subsequent state income tax filings. I made the election to carry-forward the 1996 Federal net operating loss. That election is included in the 1996 Federal tax return.

I also request consideration in this matter because for tax years beginning on or after January 1, 2000, the election to forego the carry-back of Idaho net operating losses is made by attaching a copy of the Federal net operating loss carry-forward election to the Idaho Return. A copy of the federal net operating loss election was included with the Idaho return for 1996. It was included in the complete copy of the Federal return that accompanied the Idaho tax return. Idaho tax law was also changed at that time to limit the carry-back of Idaho net operating losses to \$100,000.00. Any net operating loss in excess of this amount must be carried-forward. It is obvious that the intent of the State of Idaho is to encourage the carry-forward of net operating losses to offset future income and discourage the carry-back of the losses to previously filed tax returns.

Idaho Code [Redacted]63-3022(c)(1) states that “An election under this subsection **must** be in the manner **prescribed in the rules of the state tax commission** and once made is irrevocable for the year in which it is made.” (Emphasis added.)

At the time the petitioner’s filed their Idaho income tax return in 1997, Idaho Income Tax Administrative Rule 201 (hereafter “Rule 201”) stated:²

d. Timing and Method of Electing to Forego Carryback. The election must be made by the due date of the loss year return, including extensions. Once the completed return is filed, the extension period expires. The election referred to in this subsection is made by attaching a statement to the taxpayer's income tax return for the taxable year of the loss. The statement must contain the following information:

² The Idaho Income Tax Administrative Rules were renumbered in 1997. The predecessor of Rule 201 was Rule 018. Rule 018.06.d contained the same requirements as rule 201.d.

- i. The name, address, and taxpayer's social security number or employer identification number;
- ii. A statement that the taxpayer makes the election pursuant to Section 63-3022(d)(1), Idaho Code, to forego the carryback provision; and
- iii. The amount of the net operating loss.

The petitioners did not attach a statement to forego the Idaho carryback period as required by Idaho Code section 63-3022(d)(1). The Tax Commission has previously ruled that the federal election to forego the federal carryback period cannot be used as an election to forego the Idaho carryback period for taxable years beginning prior to January 1, 2001.³

Idaho Code section 63-3022 provides the Tax Commission the authority to prescribe rules governing the manner in which the election is made. Rule 201 has been changed to provide that the federal election can serve as an election to forego the Idaho carryback period; however, Rule 201 makes it clear that the acceptance of the federal election only applies to net operating losses incurred in taxable years beginning on or after January 1, 2001. Since the Idaho net operating loss at issue is for taxable year 1996, the changes made to Rule 201, are not applicable to the case currently before the Tax Commission and cannot provide the petitioners with the relief that the petitioners seek.

Conclusion

Since the application of the statutory provision is mandatory and not discretionary, the Commission finds that the petitioners did not fulfill the requirements under Idaho law to forego the Idaho net operating loss carryback provision of Idaho Code [Redacted]63-3022.

³ See docket no. 15956 at http://www2.state.id.us/tax/decisions_indiv02.htm. See also, docket number 14436 (issued April 11, 2000) and docket number 14387 (issued November 27, 2000) both of which can be found at http://www.state.id.us/tax/decisions_indiv00.htm.

WHEREFORE, the Notice of Deficiency Determination dated August 30, 2002, is hereby APPROVED, AFFIRMED, and MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the petitioners pay the following tax and interest:

| <u>YEAR</u> | <u>REFUND</u> | <u>REFUND ALLOWED</u> | <u>TAX</u> | <u>INTEREST</u> | <u>TOTAL</u> |
|-------------|---------------|---------------------------|------------|-----------------|----------------|
| 1993 | (\$4,841) | \$0 | | | \$0 |
| 1996 | | | 0 | 0 | 0 |
| 1997 | | | 0 | 0 | 0 |
| 1998 | | | 4,264 | 1,487 | 5,751 |
| 1999 | | | 625 | 173 | 798 |
| | | | TOTAL DUE | | <u>\$6,549</u> |

Interest is calculated through March 31, 2003, and will continue to accrue at the rate set forth in Idaho Code section 63-3045.

DEMAND for immediate payment of the foregoing amount is hereby made and given.

An explanation of the petitioners' rights to appeal this decision is enclosed with this decision.

DATED this ____ day of _____, 2003.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this ____ day of _____, 2003, a copy of the within and foregoing DECISION was served by sending the same by United States mail, postage prepaid, in an envelope addressed to:

[REDACTED]
[REDACTED]

[Redacted]
